

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
2 A Limited Liability Partnership
3 Including Professional Corporations
4 NEIL A.F. POPOVIĆ, Cal. Bar No. 132403
5 ANNA S. MCLEAN, Cal. Bar No. 142233
6 TENAYA RODEWALD, Cal. Bar No. 248563
7 JOY O. SIU, Cal. Bar No. 307610
8 DANIEL R. FONG, Cal. Bar No. 311985
9 Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
Telephone: 415.434.9100
Facsimile: 415.434.3947
Email: npopovic@sheppardmullin.com
amclean@sheppardmullin.com
rodewald@sheppardmullin.com
jsiu@sheppardmullin.com
dfong@sheppardmullin.com

10 Attorneys for Defendant,
11 SEAGATE TECHNOLOGY LLC

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

14
15 IN RE SEAGATE TECHNOLOGY LLC
16 LITIGATION

17 CONSOLIDATED ACTION

Case No. 3:16-cv-00523-JCS

18
19
20
21
22
23
24
25
26
27
28
**[PROPOSED] ORDER GRANTING
ADMINISTRATIVE MOTION TO SEAL
CERTAIN DOCUMENT FILED IN
CONJUNCTION WITH SEAGATE'S
OPPOSITION TO PLAINTIFFS'
RENEWED MOTION FOR CLASS
CERTIFICATION**

1 The Court has reviewed the Administrative Motion to Seal Certain Documents Filed in
 2 Connection with Seagate's Opposition to Plaintiffs' Renewed Motion for Class Certification. It
 3 has also reviewed the Declaration of Daniel R. Fong, filed by Seagate Technology LLC
 4 ("Seagate") in Support of the Administrative Motion to Seal, and its attached Declaration of Allen
 5 Ng. Therefore, the Court rules as follows.

6 In this district, a party seeking to file a document under seal must satisfy a two-step
 7 process. The party must "(1) comply with Civil Local Rule 79-5; and (2) rebut the [] strong
 8 presumption in favor of access that applies to all documents other than grand jury transcripts or
 9 pre-indictment warrant materials." *Gaudin v. Saxon Mortg. Servs.*, No. 11-cv-01663-JST, 2013
 10 2013 WL 2631074, at *1, 2 (N.D. Cal. June 11, 2013) (internal citations and quotations omitted).

11 The first prong requires that the party seeking to seal the document establish that (1) "the
 12 document or portions thereof is privileged or protectable as a trade secret or otherwise entitled to
 13 protection under the law; and (2) is narrowly tailored to seek sealing only of sealable material."
 14 *Id.* (citing Civil L.R. 79-5).

15 "With respect to the second prong, the showing required for overcoming the strong
 16 presumption of access depends on the type of motion to which the document is attached." *Id.*
 17 With regard to dispositive motions, the "presumption can be overcome only if the party presents
 18 'compelling reasons supported by specific factual findings that outweigh the general history of
 19 access and the public policies favoring disclosure.'" *Id.* (quoting *Damakana v. City and Cnty. of*
 20 *Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). With regard to non-dispositive motions, the
 21 Ninth Circuit has "carved out an exception to the presumption of access to judicial records[,] and
 22 those records may be filed under seal upon a showing of "good cause." *In re Midland Nat. Life*
 23 *Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119 (9th Cir. 2012) (per curiam) (internal
 24 quotation marks and citation omitted); *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir.
 25 2010) (applying "good cause" standard to all non-dispositive motions because such motions "are
 26 often unrelated, or only tangentially related, to the underlying cause of action") (internal quotation
 27 marks and citation omitted). "[T]he vast majority of other courts within this circuit" apply the
 28 "good cause" standard to sealing documents filed in connection with a Motion for Class

1 Certification. *See In re High-Tech Emp. Antitrust Litig.*, No. 5:11-cv-02509-LHK, 2013 WL
 2 5486230, at *2 n.1 (N.D. Cal. Sept. 30, 2013) (collecting cases); *Gaudin*, 2013 WL 2631074, at *2
 3 (same); *Dugan v. Lloyds TSB Bank, PLC*, No. 12-cv-02549-WHA (NJV), 2013 WL 1435223, at
 4 *1 (N.D. Cal. Apr. 9, 2013) (“Unless the denial of a motion for class certification would constitute
 5 the death knell of a case, ‘the vast majority of courts within this circuit’ treat motions for class
 6 certification as non-dispositive standard applies”) (internal formatting omitted).

7 The confidential information proposed to be filed under seal satisfies the Northern
 8 District’s two-part test. First, Seagate has narrowly tailored its request seeks to seal only two
 9 paragraphs that are “privileged or protectable as a trade secret or otherwise entitled to protection
 10 under the law.” L.R. 79-5(b). Second, good cause exists to protect Seagate’s sensitive business
 11 information from being released to competitors or to the public.

12 **A. Exhibit 25 Contains Contain Trade Secrets and Confidential Information**

13 The Ninth Circuit has adopted the definition of “trade secrets” set forth in the Restatement
 14 of Torts, holding that “[a] trade secret may consist of any formula, pattern, device or compilation
 15 of information which is used in one’s business, and which gives him an opportunity to obtain an
 16 advantage over competitors who do not know or use it.” *In re High-Tech Emp. Antitrust Litig.*,
 17 2013 WL 163779, at *1 (citing *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972)). Generally,
 18 a trade secret “relates to the production of good It may, however, relate to the sale of goods or
 19 to other operations in the business” *Id.*; *see also Muench Photography, Inc. v. Pearson
 Educ., Inc.*, No. 12-cv-01927-WHO, 2013 WL 01927, at *4-5 (N.D. Cal. Aug. 15, 2013) (sealing
 20 document containing information relating to requesting party’s “product development efforts and
 21 business strategies to competitors,” when “competitors could use these strategies themselves—
 22 strategies that [the requesting party] spent significant resources to create”).

23 As explained in the Ng Declaration, the information sought to be sealed involves Seagate’s
 24 relationship with its OEM customers and those OEM’s non-public business strategies on how to
 25 respond to potential product issues. Thus, the information is sealable under Civil Local Rule 79-5
 26 as protectable trade secret information and/or otherwise protectable by law. *See Gaudin*, 2013 WL
 27 2631074, at *2.

1 **B. Good Cause Supports Seagate's Request to Seal the Confidential Information**

2 There is also "good cause" to seal the requested information. *Gaudin*, 2013 WL 2631074,
 3 at *2. Seagate, in addition to its OEM customers, take considerable effort to ensure all of this
 4 information is kept from the public; indeed, this information was only disclosed in this case
 5 pursuant to a stipulated Protective Order. Ng Decl. ¶ 3. The information is also commercially
 6 sensitive and highly valuable to Seagate and its OEM customers. *Id.* ¶¶ 18-19. Should
 7 information regarding Seagate's and its OEM customer's business strategies be disclosed to
 8 public, it could be used to harm Seagate's and its OEM customers' "competitive standing." *Id.*, ¶
 9 5; *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (sealing appropriate to prevent
 10 documents from being used to harm to litigant's competitive standing); *Muench Photography,*
 11 *Inc.*, 2013 WL 4475900, at *4-5.

12 GOOD CAUSE APPEARING THEREFOR, the Administrative Motion to Seal is
 13 GRANTED. The documents identified below shall remain filed under seal:

Document Filed Under Seal by Plaintiffs	Portion(s) Sought To Be Sealed
Declaration of Tenaya M. Rodewald in Support of Seagate Technology LLC's Opposition to Plaintiffs' Renewed Motion for Class Certification	Exhibit 25, ¶¶ 105-106

19 **IT IS SO ORDERED.**

20
 21 DATED: _____, 2018

22
 23
 24 _____
 25 HON. JOSEPH C. SPERO
 26 UNITED STATES MAGISTRATE JUDGE